16CV3716

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
APR 07 2017 ★
LONG ISLAND OFFICE

# SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement"), dated **October 19, 2016** is entered into between MARIE CAYO ("Cayo" or "Plaintiff") in Plaintiff's own right, and on behalf of each of Plaintiff's heirs, executors, administrators, representatives, assigns, and any other person or entity acting on Plaintiff's behalf, and TRI-COUNTY HOME NURSING SERVICES, INC., together with each of its current and former parents, predecessors, successors, subsidiaries, affiliates, related entities, divisions and departments and all of their respective current and former shareholders, principals, members, officers, directors, employees, agents, insurers, attorneys, representatives and successors and assigns (collectively, "TRI-COUNTY") and defendant LINDA J. CUNEGIN (the latter collectively as "Defendants"). Plaintiff and the Defendants shall be referred to collectively herein as the "Parties."

**WHEREAS**, Plaintiff was employed by Defendants within the previous six (6) years of the date of this agreement; and

**WHEREAS**, Plaintiff commenced a lawsuit against TRI-COUNTY entitled, Marie Cayo, *on behalf of self and all others similarly situated* v. Tri-County Home Nursing Services, Inc., and Linda J. Cunegin, *individually*, Civil Action No.: 2:16-cv-3716(ADS)(ARL) (the "Action"); and

**WHEREAS**, Plaintiff has with this Agreement agreed file a Notice of Settlment with the Court in the instant Action within fourteen (14) days of the execution of this agreement; and

**WHEREAS**, at relevant times in this Action, Plaintiff has been represented by counsel, Charles, Pascal, Cohen P.C., 405 RXR Plaza, Uniondale, NY 11556; and

**WHEREAS**, Defendants have been represented by counsel:

John Yetman, Esq.,
Walsh Markus McDougal & DeBellis LLP

229 Seventh Street, Suite 200
Garden City, New York 11530
JYetman@walshcounsel.com
Phone: (516) 408-9046
Fax: (516) 741-4775,
Phone: (516) 408-9000; and

**WHEREAS**, Plaintiff acknowledges that Plaintiff has entered into this Agreement freely and voluntarily, and with the advice of Plaintiff's counsel, without threats or coercion of any kind by anyone; and

**WHEREAS**, Plaintiff acknowledges that Plaintiff understands the meaning and effect of the execution of this Settlement Agreement and General Release;

**WHEREAS**, the Parties wish to resolve any and all disputes that may exist between them concerning Plaintiff's employment and separation from employment, without incurring any additional expense or diversion of time, by entering into this Settlement Agreement and General Release; and

**NOW, THEREFORE**, in consideration of the promises, mutual representations, covenants, assurances, and warranties set forth herein, the sufficiency and receipt of which is hereby acknowledged, the undersigned do hereby agree to be bound by the following terms and conditions:

1. The Parties acknowledge that the settlement herein is solely for the compromise of all disputed claims, to avoid expense and to terminate all controversy in or claims for damages or relief of whatever nature, in any way growing out of or connected with Plaintiff's employment with and compensation from and/or separation of employment from TRI-COUNTY. Neither the negotiation, undertaking, agreement, nor execution of this Settlement Agreement and General Release shall constitute or operate as an acknowledgment or admission of any kind by Defendants that Defendants have: (a) committed any unlawful, unprofessional, unethical or discriminatory

practice; (b) violated any federal, state or local statute, rule or regulation; and/or (c) incurred any liability to Plaintiffs other than the obligations under this Agreement.

2. The Parties acknowledge and agree that this Settlement Agreement and General Release supersedes any and all agreements, whether written or oral, between Plaintiff and Defendants.

3. In full and complete settlement of all claims that Plaintiff has or may have with respect to his/her employment with, compensation and/or separation of employment from TRI-COUNTY, including but not limited to the claims asserted ~~in, or which could have been asserted~~ in, the Action, Plaintiffs hereby expressly waives the right to bring or pursue any lawsuit, grievance, arbitration or administrative proceeding, upon any claims Plaintiff may have or have had against Defendants with respect to Plaintiff's employment through the date of this agreement. Plaintiff hereby releases and discharges Defendants from any actions, charges, causes of action, suits, obligations, promises, agreements, damages, debts, complaints, liabilities, claims, grievances, arbitrations, costs, rights, expenses, which Plaintiff ever had or now may have against Defendants regarding any matter arising on or before the date of execution of this Settlement Agreement and General Release with respect to Plaintiff's employment. Said waiver shall include any and all claims, grievances, demands for arbitration or causes of action, arising out of, or in any way connected with or relating to Plaintiff's employment with and compensation from and/or separation of employment from TRI-COUNTY including, negligent termination, retaliatory discharge, under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866, 1871 and 1991, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act ("ERISA"), the Family and Medical Leave Act, the Americans with Disabilities Act, the Rehabilitation Act, the New York Labor Law, the

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New York State Human Rights Law, the New York Domestic Worker's Bill of Rights, the New York City Administrative Code, the New York City Human Rights Law, or the New York City Earned Sick Time Act. This Agreement and Release does not affect Plaintiff's rights afforded under the Older Workers Benefit Protection Act to have a judicial determination of the validity of this waiver. In addition, this Agreement and Release should not be read to act as a release of future claims under the Older Workers Benefit Protection Act. Nothing in this Agreement shall prevent Plaintiff from invoking his rights before a state or federal fair employment agency or from participating in, or cooperating with, a complaint or charge filed by someone else. However, any money paid to Plaintiff under this Agreement will prevent Plaintiff from recovering any additional money from TRI-COUNTY, Linda J. Cunegin or both.

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4. Plaintiff acknowledges and understands that by executing this Settlement Agreement and General Release Plaintiff cannot in the future file any claim, grievance and/or demand for arbitration or bring any action, lawsuit, charge or proceeding with any federal, state or local court or agency against Defendants, including any claims they may have under any plan, statute, rule or policy maintained or administered by TRI-COUNTY, arising from Plaintiff's employment with and compensation from, and/or separation of employment from TRI-COUNTY, except as otherwise provided herein.

5. In exchange for the releases and promises contained in this Settlement Agreement and General Release, and in full settlement of all claims, the Parties agree as follows:

a. **Defendants collectively agree to pay the gross amount of $8,000, in five (5) separate checks**. One hundred percent (100%) of the total payment to Plaintiff shall be attributable to any claim by Plaintiff for back pay. Provided Plaintiff executes and does not subsequently revoke this Agreement, within 14 days of the execution of this Agreement, The **five (5) checks shall be paid as follows**:

i. TRI-COUNTY will issue **one (1) check in the amount of $3,300, drawn payable to "Charles, Pascal, Cohen P.C."** (TIN 81-1281512), from which there shall be no withholding or deductions;

ii. TRI-COUNTY will issue **four (4) additional checks in an amount of $1,175 each ("installments")**, drawn payable to "Charles, Pascal, Cohen P.C." (TIN 81-1281512), from which there shall be no withholding or deductions. **The installments shall be paid on the following schedule: ~~11/27/2016, 12/27/2016, 1/27/2017 and 2/27/2017~~**; ~~2/20/2017 3/20/2017 4/20/2017 5/20/2017~~ 4/20/17 5/20/17 6/20/17 7/20/17

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iii. All payments set forth above shall be delivered to Plaintiff's Counsel: Charles, Pascal, Cohen P.C., 405 RXR Plaza, Uniondale, New York 11556.

6. It is understood that TRI-COUNTY or its agents will at the appropriate time issue an IRS Form 1099 to Charles, Pascal, Cohen P.C. for the payments made to the same.

7. In the event that any of the payments described above are not received by Plaintiff's Counsel by the dates set forth above, Plaintiff's Counsel shall notify Defendants' Counsel, via facsimile at (516) 741-4775, electronic mail or via First Class U.S. Mail of said default. In the event Defendants fail to cure said default within ten (10) days of receipt of said notice, Plaintiffs shall be permitted to enter judgment against Defendants in the amount of Eight Thousand and 00/100 Dollars ($8,000.00), less any monies theretofore paid by Defendants under this Settlement Agreement, as set forth in the Affidavits of Confession annexed hereto as **Exhibit A**. **Said Affidavits of Confession are only to be filed with the Court, in the event of Defendant's**

**default, as set forth herein. Plaintiff's Counsel shall hold the Affidavits of Confession, in escrow, pending receipt of all the payments referenced above.** In the event that all of the payments are made in accordance with the aforesaid paragraphs, Plaintiff's Counsel shall immediately return the Affidavits of Confession to Defendants' Counsel.

8. Plaintiffs hereby acknowledges and agrees that the foregoing is in lieu of any other payments or any benefits that Plaintiff may be entitled to under any other agreement or arrangement that they may claim to have had with TRI-COUNTY, and that by entering into this Settlement Agreement and General Release, Plaintiff extinguishes any and all rights Plaintiff may have to any payments or benefits from TRI-COUNTY other than the payments and benefits enumerated herein. Plaintiff also acknowledges that the payments and other benefits and consideration they will receive under this Settlement Agreement and General Release are not otherwise an obligation of TRI-COUNTY, but are offered in consideration for their execution of the Settlement Agreement and General Release. Plaintiff expressly acknowledges and agrees that the payments and other benefits and consideration that Plaintiff will receive under this Settlement Agreement and General Release will constitute a set-off against any future verdict, judgment or award obtained by Plaintiff against TRI-COUNTY and any future claim for damages or liability made by Plaintiff against TRI-COUNTY.

9. A. As this Agreement contains a release of any claims, including potential claims under the Age Discrimination in Employment Act, Plaintiff is entitled to at least twenty-one (21) days in which to consider this Agreement. Plaintiff hereby waives the twenty-one (21) day period freely and voluntarily and with full knowledge of his/her rights and Plaintiff will initial this paragraph to reflect such waiver.

Marie Cayo: MC ________ (initial)

B. As a result of the Older Workers Benefit Protection Act, Plaintiff shall have the right to cancel this Agreement within seven (7) days from execution, and the Release contained herein shall not take effect within said seven (7) day period. At the expiration of the seven (7) day period, Plaintiff's right to cancel the Agreement shall cease. In order to exercise Plaintiff's right to revoke within said seven (7) day period, Plaintiff must notify TRI-COUNTY's Counsel, John Yetman, Esq., of the exercise of that right. In the event that Plaintiff exercises the right to revoke during the seven-day period, this Agreement shall be null and void and of no force and effect, and Plaintiff shall receive none of the benefits hereunder.

10. Plaintiff warrants and represents that, as of the date and time of his execution of this Settlement Agreement and General Release, apart from the Action identified above, Plaintiff has not filed any lawsuit, claim or complaint of any type with any court or federal, state or local agency or entity against TRI-COUNTY and/or Linda J. Cunegin. Plaintiff acknowledges and understands that Defendants are entering into this Settlement Agreement and General Release in reliance upon this and all other representations made in this Settlement Agreement and General Release.

11. Plaintiff hereby waives any right Plaintiff has, or may have to employment or re-employment with TRI-COUNTY.

12. Plaintiff hereby represents that Plaintiff understands the meaning and effect of this Settlement Agreement and General Release. Plaintiff further represents that he/she has been given sufficient opportunity to reflect upon their decision to enter into this Agreement, that they have been fully and fairly represented by their chosen counsel, Charles, Pascal, Cohen P.C., and that they have voluntarily and freely entered into this Settlement Agreement and General Release.

13. Plaintiff shall, upon the execution of this Agreement, return to TRI-COUNTY any

and all equipment, keys, identification cards, passes, files, whether originals or copies, records, whether originals or copies, passwords and/or access codes and all other remaining property in their possession which are the property of TRI-COUNTY.

14. Plaintiff agrees not to make public, or to disclose to any third party in any manner, except as required by law, the specific terms or discussions leading up to this Settlement Agreement and General Release, the specific terms of this Settlement Agreement and General Release or any facts concerning or underlying Plaintiff's claims against Defendants and/or Plaintiff's employment with and separation of employment from TRI-COUNTY, but rather agree that they shall remain strictly confidential. This provision shall not preclude Plaintiffs from disclosing any information to their spouse, attorneys, mental health professionals, tax preparers and taxing authorities, or from truthfully testifying or participating in any action, proceeding, lawsuit, hearing, arbitration or mediation provided that Plaintiff first inform them of the provisions of this confidentiality provision and they agree to be bound thereby. Plaintiff represents that he/she will not, in any way, publicly or otherwise make or solicit any comments, statements or the like that are derogatory or detrimental to the good name or reputation of the Defendants.

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15. This Settlement Agreement and General Release contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. There are no restrictions, promises, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein.

16. If any of the provisions, terms, clauses, waivers, or releases of claims or rights contained in this Settlement Agreement and General Release are declared illegal, unenforceable or ineffective in a legal forum of competent jurisdiction, then such provisions, terms, clauses, waivers or releases of claims or rights shall be deemed severable, such that all other provisions,

terms, clauses, waivers and releases of claims and rights contained in this Agreement shall remain valid and binding upon the Parties.

17. The governing law of this Agreement shall be the substantive and procedural laws of the State of New York, without regard to its conflict of law provisions.

18. The Parties are bound by this Agreement. Anyone who succeeds to their rights and responsibilities, such as their heirs or the executors of their estate, are also bound. This Agreement is made for the benefit of the Parties and all who succeed to their rights and responsibilities, including without limitation their successors and/or assigns.

**IN WITNESS WHEREOF**, the Parties have executed this Settlement Agreement and General Release as of the dates written below.

Sign: Marie Yolaine Cayo
**MARIE CAYO, PLAINTIFF**

State of New York )
) ss:
County of Nassau )

On this 7th day of January, 2017, Marie Cayo, identified to be the Plaintiff described above, personally appeared before me and executed the foregoing Separation Agreement and General Release in my presence.

[signature]
NOTARY PUBLIC

SHAWN O. COHEN
Notary Public, State of New York
No. 02CO6323889
Qualified in Nassau County
My Commission Expires 04-27-2019

**TRI-COUNTY HOME NURSING SERVICES, INC.,** DEFENDANT

By (Print): Linda J. Cunegin Title: Administrator/Owner

(Sign): Linda J. Cunegin

State of New York )
) ss:
County of Nassau )

On this 22 day of November, 2016 the individual whose name and signature appears immediately above, personally appeared before me, was identified as described above, and executed the foregoing Separation Agreement and General Release in my presence.

Meg A. VonGlahn
NOTARY PUBLIC

MARY A. VONGLAHN
Notary Public, State of New York
No. 4963408
Qualified in Suffolk County
Commission Expires March 12, 2018

## CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the *Motion for Approval of Settlement Agreement & Motion for Leave to File Document Under Seal*, by Electronic Mail, this 7th day of March, 2017, on:

John R. Yetman, Esq.
**Walsh Markus McDougal & DeBellis LLP**
229 Seventh Street, Suite 200
Garden City, New York 11530
JYetman@walshcounsel.com
Phone: (516) 408-9046
Fax: (516) 741-4775
*Attorneys for Defendants*

I affirm that the foregoing statements are true, under penalty of perjury.

Dated: Uniondale, New York
March 7, 2017

*/s/ Shawn Cohen*
Shawn Cohen, Esq.
**CHARLES, PASCAL, COHEN P.C.**
405 RXR Plaza
Uniondale, NY 11556
P (516)522-0677
F (516)706-1978
scohen@cpcohen.com
*Attorney for Plaintiff*

Agreement Approved.
So ORDERED

s/ Arthur D. Spatt

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